

ESTTA Tracking number: **ESTTA125158**

Filing date: **02/15/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	78276739
Applicant	ORVIS COMPANY, INC., THE
Applied for Mark	STREAMLINE
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Submission	Reply Brief
Attachments	OCEE-500012-REPLYBRIEF.pdf (6 pages)(201042 bytes)
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Date	02/15/2007

CERTIFICATE OF MAILING

I hereby certify that this **Applicant's Reply Brief** is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Attention: TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on _____.

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : The Orvis Company, Inc.
Mark : **STREAMLINE**
Serial No. : 78/276,739
Filed : July 21, 2003
Examining Attorney : Zachary R. Bello
Law Office : 111
Last Office Action : January 27, 2007
Attorney Docket No. : OCEE 5 00012

Cleveland, Ohio 44114
February 12, 2007

APPLICANT'S REPLY BRIEF

Attention: TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Commissioner:

INTRODUCTION

Applicant, The Orvis Company, Inc., hereby replies to the Examining Attorney's Appeal Brief electronically mailed January 27, 2007. Applicant respectfully requests

that the Trademark Trial and Appeal Board reverse the Examining Attorney's decision refusing registration and grant Applicant's request for registration of STREAMLINE for fishing vests.

ARGUMENT

1. THE ATTACHMENTS TO THE EXAMINING ATTORNEY'S APPEAL BRIEF SHOULD BE STRICKEN

The Examining Attorney attached a series of internet web pages, all of which were printed in January 2007. It is submitted that none of these internet web pages were previously made of record prior to appeal or during any remand see e.g. TBMP § 1207.02). It is improper for the Examining Attorney to submit new evidence with his appeal brief. Applicant submits that the Examining Attorney's Appeal Brief attachments should be stricken.

2. APPLICANT'S EVIDENCE WAS PROPERLY SUBMITTED

The Examining Attorney argues that the Applicant improperly submitted evidence that was not previously provided to the Examining Attorney. All evidence that was attached to Applicant's brief was made of record either during original prosecution, on request for reconsideration, or during remand. These are all appropriate times for placing evidence into the record. See TBMP § 1207.02. Evidence such as dictionary definitions are appropriate facts for judicial notice. See TBMP § 704.12(a).

3. NATURAL ZONE OF EXPANSION: FISHING RODS TO FISHING VESTS

The Examining Attorney alleges that the goods in the cited registration (i.e., women's and girl's swimwear, leotards and girdles) have a natural zone of expansion to fishing vests. Aside from these allegations, the Examining Attorney provided no evidence that there is such a natural zone of expansion from the goods in the cited registration to fishing vests. Indeed, while some large department stores and department store websites may sell both types of goods, the goods are not sold side by side, nor are they branded by the same source. Consumers are accustomed to seeing a variety of different products in such establishments. See *Recot, Inc. v. Becton*, 54 USPQ2d 1894 (Fed. Cir. 2000) on remand, 56 USPQ2d 1859 (TTAB 2000); and *Hi-Country Foods v. Hi Country Beef*, 4 USPQ2d 1169 (TTAB 1987) (prepared beef snack foods and fruit juices, though both food product are completely different in character and not normally sold in the same sections of food stores and would not be expected to originate from the same source).

To the contrary, the goods in Applicant's existing Reg. No. 3,074,283 for STREAMLINE (i.e. fishing tackle) are very closely related to fishing vests. Fishing rods and fishing vests are closely related and within the other's natural zone of expansion. The evidence of record shows that fishing tackle and fishing vests are regularly sold side by side and in the same departments. See, e.g. Exhibits B-E of Applicant's Appeal Brief. Moreover, Applicant previously cited two registrations (i.e., Reg. Nos. 1,888,631 and 2,630,583) (Exhibits G and H to the main brief) to show the relatedness of fishing vests and fishing tackle. Indeed, these registrations show that fishing vests are sometimes registered along with tackle in Class 28 (as opposed to Class 25). This shows that fishing vests are viewed as technical goods in the nature of wearable tackle

boxes. There is absolutely no indication in the record that women's and girl's swimwear, leotards and girdles would be likely to expand to such technical products as fishing vests.

The registrations cited by applicant as supporting the related nature of fishing tackle and fishing vests are treated in the Examining Attorney's Appeal Brief in the paragraph just above the heading "Weak Marks are Also Protected." The brief asserts that these registrations are not pertinent as there are no conflicting marks with respect to the registrations. This reasoning is incorrect for two reasons. First, the assertion is factually incorrect. Applicant has reviewed the trademark records and notes that there are, indeed, identical marks registered for clothing. For example, the mark in Reg. No. 2,630,583 (Exhibit H of Applicant's Appeal Brief) is SPEEDSTER, which is registered in association with, *inter alia*, fishing tackle and fishing vests. Applicant notes that an identical registration for SPEEDSTER, Reg. No. 2,080,517, exists for women's and men's clothing for leisure wear, namely sweaters, jackets, trousers, vests, coats, jeans, polo shirts, T-shirts and pullovers. Hence, contrary to the Examining Attorney's assertion, the identical mark SPEEDSTER is registered to separate parties for fishing tackle and fishing vests on one hand and clothing on the other.

A copy of Reg. No. 2,080,517 is attached as Exhibit N. Applicant attaches this registration in response to an incorrect factual assertion made in the Appeal Brief.

Second, the point supported by the registrations is that consumers see fishing tackle and fishing vests from the same source under the same mark. Whether others use the mark on different goods is not relevant to the point established by the registrations: at least two companies have registered marks reciting use on fishing

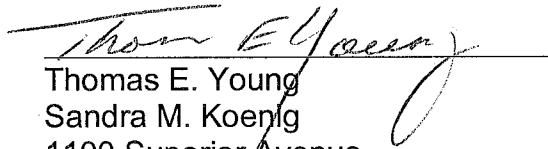
tackle and fishing vests. These registrations are evidence that the marketplace views these products (fishing tackle and fishing vests) as related.

CONCLUSION

The foregoing reasons, it is respectfully requested that the Trademark Trial and Appeal Board reverse the Examining Attorney's refusal and allow STREAMLINE to register in association with fishing vests.

Respectfully submitted,

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Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,080,517

United States Patent and Trademark Office

Registered July 22, 1997

**TRADEMARK
PRINCIPAL REGISTER**

SPEEDSTER

**PORSCHE DESIGN PRODUKTE VERTRIEBS-
GESELLSCHAFT M.B.H. (AUSTRIA LIMIT-
ED LIABILITY COMPANY)
A-5020 SALZBURG
SUDTIROLER PLATZ 11
OSTERREICH, AUSTRIA**

**FOR: WOMEN'S AND MEN'S CLOTHING
FOR LEISURE WEAR, NAMELY SWEATERS,
JACKETS, TROUSERS, VESTS, COATS, JEANS,**

**POLO SHIRTS, T-SHIRTS AND PULLOVERS,
IN CLASS 25 (U.S. CLS. 22 AND 39).**

**PRIORITY CLAIMED UNDER SEC. 44(D) ON
AUSTRIA APPLICATION NO. AM2956 94,
FILED 6-20-1994, REG. NO. 153662, DATED
7-25-1994, EXPIRES 4-30-2005.**

SER. NO. 74-613,742, FILED 12-21-1994.

R. M. FEELEY, EXAMINING ATTORNEY

